

PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

To:
SAMIR A. BHAVSAR
BAKER BOTTS LLP
2001 ROSS AVENUE
DALLAS, TX 75201

DOCKETED

PCT

NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL SEARCH REPORT AND
THE WRITTEN OPINION OF THE INTERNATIONAL
SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

Applicant's or agent's file reference 075234 0155-0210	Date of mailing (day/month/year) 24 MAR 2008
International application No. PCT/US06/08695	FOR FURTHER ACTION See paragraphs 1 and 4 below
Applicant CANTOR INDEX LLC	International filing date (day/month/year) 09 March 2006 (09.03.2006)

1. ☒ The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.

Filing of amendments and statement under Article 19:

The applicant is entitled, if he so wishes, to amend the claims of the international application (see Rule 46):

When? The time limit for filing such amendments is normally two months from the date of transmittal of the international search report.

Where? Directly to the International Bureau of WIPO, 34 chemin des Colombettes
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 338.82.70.

For more detailed instructions, see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.
3. ☐ With regard to the protest against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:
- ☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.
- ☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

4. Reminders

Shortly after the expiration of 18 months from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within 19 months from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until 30 months from the priority date (in some Offices even later); otherwise, the applicant must, within 20 months from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices.

In respect of other designated Offices, the time limit of 30 months (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the ISA/US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Authorized officer Robert Pezzuto <i>[Signature]</i> Telephone No. (571) 272-3750 <i>[Signature]</i>
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Form PCT/ISA/220 (January 2004)

(See notes on accompanying sheet)

PATENT COOPERATION TREATY

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INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference 075234.0153	FOR FURTHER ACTION see Form PCT/ISA/220 as well as, where applicable, item 5 below	
International application No. PCT/US06/08695	International filing date (day/month/year) 09 March 2006 (09.03.2006)	(Earliest) Priority Date (day/month/year) 09 March 2005 (09.03.2005)
Applicant CANTOR INDEX LLC		

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 2 sheets.

☐

It is also accompanied by a copy of each prior art document cited in this report.

1. Basis of the Report

- a. With regard to the language, the international search was carried out on the basis of:

☒

the international application in the language in which it was filed.

☐

a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b))

- b. ☐ This international search report has been established taking into account the rectification of an obvious mistake authorized by or notified to this Authority under Rule 91 Rule 43.6 bis(a)

- c. ☐ With regard to any nucleotide and/or amino acid sequencedisclosed in the international application, see Box No. I.

2. ☐ Certain claims were found unsearchable(See Box No. II)

3. ☐ Unity of invention is lacking(See Box No. III)

4. With regard to the title,

☒

the text is approved as submitted by the applicant.

☐

the text has been established by this Authority to read as follows:

5. With regard to the abstract,

☒

the text is approved as submitted by the applicant.

☐

the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. With regard to the drawings,

- a. the figure of the drawings to be published with the abstract is Figure No. _____

☐

as suggested by the applicant.

☐

as selected by this Authority, because the applicant failed to suggest a figure.

☐

as selected by this Authority, because this figure better characterizes the invention.

- b. ☒ none of the figures is to be published with the abstract.

INTERNATIONAL SEARCH REPORT

International application No.

PCT/US06/08695

A. CLASSIFICATION OF SUBJECT MATTER

IPC: A63F 13/00(2006.01)
A63F 13/00(2006.01)

USPC: 463/6,16,25

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)
U.S. : 463/ 6, 16, 25

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)
USPAT, USPG-PUB, EPO, JPO - wagar, horse, trifecta

C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X --- Y	US 2003/0119582 (OCAMPO) 26 June 2003 (26.06.2003) Paragraphs 4-33	1-6, 8-14, 17, 20 ----- 7,15-16, 18-19, 21-27
Y	WO 01/65508 A2 (SATTERFIELD) 7 September 2001 (07.09.2001) Full text	21-24
Y	US 5,687,968 (TARANTINO) 18 November 1997 (18.11.1997) Column 1	25

☐ Further documents are listed in the continuation of Box C.

☐ See patent family annex.

* Special categories of cited documents:

"A" document defining the general state of the art which is not considered to be of particular relevance

"E" earlier application or patent published on or after the international filing date

"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)

"O" document referring to an oral disclosure, use, exhibition or other means

"P" document published prior to the international filing date but later than the priority date claimed

"T"

later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention

"X"

document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

"Y"

document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art

"Z"

document member of the same patent family

Date of the actual completion of the international search
15 March 2008 (15.03.2008)

Date of mailing of the international search report
24 MAR 2008

Name and mailing address of the ISA/US
Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
Facsimile No. (571) 273-3201

Authorized officer

Robert Pezzuto
Telephone No. (571) 272-3750

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
SAMIR A. BHAVSAR
BAKER BOTTS LLP
2001 ROSS AVENUE
DALLAS, TX 75201

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing
(day/month/year) **24 MAR 2008**

FOR FURTHER ACTION

See paragraph 2 below

Applicant's or agent's file reference

075234.0153

International application No.

PCT/US06/08695

International filing date (day/month/year)

09 March 2006 (09.03.2006)

Priority date (day/month/year)

09 March 2005 (09.03.2005)

International Patent Classification (IPC) or both national classification and IPC

IPC: **A63F 13/00** (2006.01) **A63F 13/00** (2006.01)

USPC: **463/6,16,25**

Applicant

CANTOR INDEX LLC

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Facsimile No. (571) 273-3201

Date of completion of this opinion

15 March 2008 (15.03.2008)

Authorized officer

Robert Pezzuto

Telephone No. (571) 272-3750

Form PCT/ISA/237 (cover sheet) (April 2007)

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US06/08695

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed
☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. ☐ This opinion has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43*bis*.1(a))

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
☐ table(s) related to the sequence listing

b. format of material

- ☐ on paper
☐ in electronic form

c. time of filing/furnishing

- ☐ contained in the international application as filed.
☐ filed together with the international application in electronic form.
☐ furnished subsequently to this Authority for the purposes of search.

4. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

5. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US06/08695

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>7, 15-16, 18-19, 21-27</u>	YES
	Claims <u>1-6, 8-14, 17, 20</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-27</u>	NO
Industrial applicability (IA)	Claims <u>1-27</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Please See Continuation Sheet

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US06/08695

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

V. 2. Citations and Explanations:

Claim 1-6, 8-14, 17, and 20 lacks novelty under PCT Article 33(2) as being anticipated by Ocampo (2003/0119582).

Claims 1-3, 20: Ocampo teaches a bet execution system including:

Allowing the placement of a group bet wherein the group bet includes two subsets of participants from a plurality of participants and is determined to be a winning group bet if one of the two subsets included in the group bet wins the event (*Ocampo* "Trifecta Box" Para 16, 21-30);

incorporating a "takeout" or commission rate in a pari-mutuel betting system (*Ocampo* Paragraph 4-5);

Claims 4-5: Ocampo teaches the placement of wagers on less than all participant in a race event with the presentation of a wager where participants 2 and 4 are noticeable absent from the 1,3,5 box wager (*Ocampo* Para 16, 21-30).

Claim 6: The presented claim language provides for the identification of participant subsets that are non-exclusive. This language is accordingly provided through box type wagers including the Trifecta box as presented by Ocampo as referenced above.

Claim 8: Ocampo teaches that the finish order of the participants in a boxed group bet does not consider the order of participant finish in determining a winning outcome (*Ocampo* Para 20-22).

Claim 9: Ocampo teaches that a boxed Trifecta wager is equivalent to placing three separate win bets as cited above while the consideration of wagers to determination if a given wager is successful is understood as inherent to the distribution of winnings (*Ocampo* Para 4).

Claim 10-11: Consideration of the winning and losing bets in the determination of bet payout are inherent features of a pari-mutuel system, since without such consideration the monies wagered cannot not be redistributed without creating an additional positive or negative residual to the distribution.

Claim 12-13, 17: The limitations of the respective claims are generally addressed under the redress of at least claims 10 and 11. The particulars of determining a payout amount through the consideration of wagers placed on non-winning participants is understood to include an additional step of considering the wagers placed on the winning participant because such a consideration is not specifically prohibited by the claim language and moreover in absence of such a consideration it would be impossible to determine the payout amount per wager placed on a winning participant.

Claim 14: Ocampo teaches the use of scratches to remove a participant from an event (*Ocampo* Para 215-217). In a pari-mutuel system any payout associated with a participant that has been removed from an event must inherently be redistributed among the remaining participants in order to avoid creating an additional positive or negative residual to the payout distribution.

Claims 7, 15-16, 18-19 lack an inventive step under PCT Article 33(3) as being obvious over Ocampo (2003/0119582).

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US06/08695

Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Claim 7: The Ocampo is arguably silent regarding exclusion of a singular participant in the placement of a first and second subset of participants however this betting technique is exceptionally old and well known in the art as lay betting or alternatively referenced as betting the field.

Claims 15-16, 18-19: The presented claim language teaches determining a payout amount (ratio) according to dividing the bets on non-winning participants by the bets placed on the winning participants. This defined relationship teaches a pari-mutuel distribution of the proceeds from non-winning bets across winning bets as taught and cited above by Ocampo. Ocampo however arguably does not teach the specifics of the particular computational steps of determining the distribution of winnings in a pari-mutuel system. These steps as presently claimed, represents the mere use of known mathematical functions to provide a known distribution (player payout) from an initial data distribution (bet/wagers placed) and accordingly one of ordinary skill in the art at the time of invention would have recognized a finite set of solutions to the determine the distribution of wager/bets to determine player payouts. These claim limitations are held as obvious as one skilled in the art is choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success. A person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely that product was not of innovation but of ordinary skill and common sense (KSR International Co. v. Teleflex Inc).

Claim 21-24 lacks an inventive step under PCT Article 33(3) as being obvious over Ocampo (2003/0119582) in view of Satterfield et al (WO 01/65508 A2).

Ocampo teaches the invention as cited above however is silent regarding the placement of a wager to necessarily include the favorite and wherein that favorite may be undefined at the time of wager placement. In a related horse wagering system however Satterfield teaches an method of managing bets that allows a user to enter wager criteria directed to a particular track, horse, jockey, trainer, racetrack surface, race distance, statistics, silks, odds and/or change in odds into an automated system and upon the satisfaction of the criteria entered by the user, automatically place a wager on respective participants at some time after receiving the wager criteria (See pages 2-3, 30, & 34-36). The method of Satterfield et al provides for the placement of wager criteria prior to the identification of participants in an event and therefore teaches allowing the user to wager on an "undefined subset" of the participants competing in a race. It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the features of Satterfield into the invention of Ocampo in order to allow the placement of wagers prior to a race event and the determination the race participants.

Claim 25 lacks an inventive step under PCT Article 33(3) as being obvious over Ocampo (2003/0119582) in view of Tarantino (US 5,687,968).

Ocampo teaches the invention as set forth above however is silent regarding the utilization of odds determined at the time the bet was placed or at some time after the bet was placed to calculate the payout amount however as one of ordinary skill in the art would have required a defined period for determining the odds utilized to calculate winning payout amounts on a race in the invention of Ocampo it would have been obvious at the time of invention for one of ordinary skill in the art to employ known manners and time periods for determining the odds including setting the odds at the time of the wager placement and setting the odds after the close of wagering as taught by Tarantino (*Tarantino* Col 1:18-51).

Claims 1-27 meets the criteria set out in PCT Article 33(4), and thus has industrial applicability because the subject matter claimed can be made or used in industry.

NOTES TO FORM PCT/ISA/220

These Notes are intended to give the basic instructions concerning the filing of amendments under Article 19. The Notes are based on the requirements of the Patent Cooperation Treaty, the Regulations and the Administrative Instructions under that Treaty. In case of discrepancy between these Notes and those requirements, the latter are applicable. For more detailed information, see also the *PCT Applicant's Guide*, a publication of WIPO.

In these Notes, "Article," "Rule" and "Section" refer to the provisions of the PCT, the PCT Regulations and the PCT Administrative Instructions, respectively.

INSTRUCTIONS CONCERNING AMENDMENTS UNDER ARTICLE 19

The applicant has, after having received the international search report and the written opinion of the International Searching Authority, one opportunity to amend the claims of the international application. It should however be emphasized that, since all parts of the international application (claims, description and drawings) may be amended during the international preliminary examination procedure, there is usually no need to file amendments of the claims under Article 19 except where, e.g. the applicant wants the latter to be published for the purposes of provisional protection or has another reason for amending the claims before international publication. Furthermore, it should be emphasized that provisional protection is available in some States only (see *PCT Applicant's Guide*, Volume I/A, Annexes B1 and B2).

The attention of the applicant is drawn to the fact that amendments to the claims under Article 19 are not allowed where the International Searching Authority has declared, under Article 17(2), that no international search report would be established (see *PCT Applicant's Guide*, Volume I/A, paragraph 296).

What parts of the international application may be amended ?

Under Article 19, only the claims may be amended.

During the international phase, the claims may also be amended (or further amended) under Article 34 before the International Preliminary Examining Authority. The description and drawings may only be amended under Article 34 before the International Preliminary Examining Authority.

Upon entry into the national phase, all parts of the international application may be amended under Article 28 or, where applicable, Article 41.

When ? Within 2 months from the date of transmittal of the international search report or 16 months from the priority date, whichever time limit expires later. It should be noted, however, that the amendments will be considered as having been received on time if they are received by the International Bureau after the expiration of the applicable time limit but before the completion of the technical preparations for international publication (Rule 46.1).

Where not to file the amendments ?

The amendments may only be filed with the International Bureau and not with the receiving Office or the International Searching Authority (Rule 46.2).

Where a demand for international preliminary examination has been/is filed, see below.

How ? Either by cancelling one or more entire claims, by adding one or more new claims or by amending the text of one or more of the claims as filed.

A replacement sheet must be submitted for each sheet of the claims which, on account of an amendment or amendments, differs from the sheet originally filed.

All the claims appearing on a replacement sheet must be numbered in Arabic numerals. Where a claim is cancelled, no renumbering of the other claims is required. In all cases where claims are renumbered, they must be renumbered consecutively (Section 205(b)).

The amendments must be made in the language in which the international application is to be published.

What documents must/may accompany the amendments ?

Letter (Section 205(b)):

The amendments must be submitted with a letter.

The letter will not be published with the international application and the amended claims. It should not be confused with the "Statement under Article 19(1)" (see below, under "Statement under Article 19(1)").

The letter must be in English or French, at the choice of the applicant. However, if the language of the international application is English, the letter must be in English; if the language of the international application is French, the letter must be in French.